

REMARKS

The Non Final Office Action, mailed July 2, 2007, considered claims 1–29. Claims 4, 7, 8, 9, 12, 13, 14, 26, and 27 were objected to because of informalities. Claims 1–29 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Markaroff et al., IEEE TRANSACTIONS ON SOFTWARE ENGINEERING, Vol. 27, No. 1, January 2001 (hereinafter Markaroff), in view of Khisti et al., U.S. Patent Pub. No. 2004/0174815 (filed Mar. 3, 2003) (hereinafter "Khisti").¹

By this response, no claims are amended such that claims 1–29 remain pending.

Initially, it will be noted that, at the time of the invention, Khisti was assigned or subject to an assignment to Microsoft, the assignee of the present invention. It will also be noted that Khisti qualifies as prior art, if at all, only as 102(e) art. Accordingly, as per 35 U.S.C. §103(c), Khisti is disqualified as a prior art reference for use in the §103 obviousness rejections for the present case.

In view of the foregoing, Applicant respectfully submits that all of the rejections of record – which are all §103 rejections that are based at least in part on Khisti – are now moot and do not, therefore, need to be addressed on their merits at this time.²

¹ Although the prior art status of the cited art is not being challenged at this time, Applicants reserve the right to challenge the prior art status of the cited art at any appropriate time, should it arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

² It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as the required motivation or suggestion to combine the relied upon notice with the other art of record.

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at 801-533-9800.

Dated this 2nd day of October, 2007.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Rick D. Nydegger', written in a cursive style.

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